

In the Matter of Merchant Mariner's Document No. Z-19626(R)
Issued to: FRED STOOF

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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FRED STOOF

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 12 June, 1953, an Examiner of the United States Coast Guard at New York, N.Y., suspended Merchant Mariner's Document No. Z-19626(R) issued to Fred Stoof upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as deck maintenance man on board the American SS NEVADAN under authority of the document above described, on or about 16 May, 1953, while said vessel was in the port of Los Angeles, California, he (1) wrongfully deserted said vessel; and (2) wrongfully failed to join his vessel at that port.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made an opening statement and introduced in evidence an entry from page 17 of the official logbook relating to this Appellant together with other entries from the vessel's official logbook on pages 18 and 19 relating to other seamen.

Appellant testified under oath in his own behalf and offered several documents from the United States Public Health Service as his Exhibits A, B, C, D and E.

At the conclusion of the hearing, having heard brief argument from the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the first specification. Because the offense alleged in the second specification was encompassed within the first specification, the second specification was dismissed. The Examiner then entered the order suspending Appellant's Merchant Mariner's Document No. Z-19626(R) and all other licenses, certificates of service and documents held by this Appellant for a period of nine months; the first three months of said suspension to be outright; the last six months should not be made effective provided no charge under R.S. 4450, as amended, is proved against

Appellant for acts committed within twelve months of 12 September, 1953.

From that order, this appeal has been taken, and it is urged:

1. The sentence is too severe;
2. The employing company did not consider him a deserter; it advanced him money to proceed from San Pedro, California, to New York, N. Y., where he collected the balance of wages due him.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 16 May, 1953, Appellant was serving as deck maintenance man on board the American SS NEVADAN and acting under authority of his Merchant Mariner's Document No. Z-19626(R) when said vessel was in the port of Los Angeles, California.

Several days (about 5 May, 1953) before the vessel arrived at Los Angeles, Appellant had sustained personal injuries about his body, and upon arrival in port, he was given permission by the Master to go to the United States Public Health Service, Outpatient Clinic, at San Pedro, for treatment. His condition then was diagnosed on 15 May, 1953, as "unfit for duty - fit to travel." The anticipated date of his recovery and resumption of regular duty was stated to be "one week."

Thereafter, on that date, Appellant returned to the NEVADAN, but at about 0045 on 16 May, 1953, just prior to the vessel's scheduled time of departure, he assembled his papers and some of his seaman's gear and left the vessel - having instructed a shipmate respecting the gear that he did not remove.

Upon leaving the vessel he admittedly had no intention to return to her; he did not inform the Master or any other officer of his intention to depart; he did not sign off the shipping articles prior to departure; nor did he make any request for a mutual release.

Later, the company which had employed him on the NEVADAN paid his transportation costs from San Pedro to New York where he signed off the shipping articles and received the balance of wages earned by him on the voyage.

OPINION

The facts narrated above are taken from Appellant's own testimony before the Examiner. They establish every element which constitutes the legal offense of "desertion" in the admiralty courts; and Appellant readily admitted his fault in failing to advise the Master of his intention to leave the service of the ship. I find little to add to the Examiner's Opinion and insofar as it is consistent with the above, I adopt it as my own.

I am constrained to modify the Examiner's Order for the reason that Appellant would have been physically incapacitated for work for about a week even if he had remained with the vessel. While I will not indulge seamen who take matters into their own hands and either respect or repudiate their shipping agreements, as they see fit, in this case I consider the term of the outright suspension as severe; and, therefore, direct entry of the following

ORDER

That Merchant Mariner's Document No. Z-19626(R) and all other valid licenses, documents, certificates, and indorsements, now held by Fred Stoof be, and the same are suspended for a period of nine months; the first one month of said suspension shall be outright beginning 12 June, 1953. The last eight months of said suspension shall not be effective provided no charge under R. S. 4450 (46 U. S.C. 239), as amended, is proved against Fred Stoof for acts committed within twelve months of 12 June, 1953.

As so modified, the Examiner's Order dated New York, N. Y., on 12 June, 1953, is ~~REVERSED~~ **AFFIRMED**.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 25th day of June, 1953.